



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board of Audiology & Speech-Language Pathology; Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC30-20-10 set seq.
Regulation title	Regulations Governing the Practice of Audiology & Speech-Language Pathology
Action title	Periodic review of regulations
Date this document prepared	3/3/11

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

In order to arrange the regulations governing the practice of audiology and speech-language pathology in a more understandable, logical manner, the Board will consider repeal of the current chapter and promulgation of a replacement chapter. By doing so, the qualifications for each profession can be set out separately, and the regulations relating to provisional licensure in audiology can be set out in one section.

Substantively, the qualifications for licensure will not be changed, but the continuing education requirements will be modified to reflect annual renewals and to eliminate the Type 1 and Type 2 categories. Rather than 30 hours every two years, the Board will propose a requirement of 10 hours every year with the ability to transfer or credit excess hours to the next renewal year. Additionally, the grounds for unprofessional conduct will be expanded to include problematic conduct for which the Board currently has no grounds for disciplinary action.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

18VAC30-20-10 et seq. Regulations Governing the Practice of Audiology & Speech-Language Pathology are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400 (6) provides the Board of Audiology & Speech-Language Pathology the authority to promulgate regulations to administer the regulatory system:

§ 54.1-2400 -General powers and duties of health regulatory boards

The general powers and duties of health regulatory boards shall be:

- ...
- 6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.) of this title. ...*

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

Consistent with the Board’s responsibility to protect the health and safety of the public, it will propose additional grounds for disciplinary action for causes such as revocation, suspension or restriction by another regulatory board, failure to comply with laws on patient confidentiality and provision of records, and actions that would constitute a professional boundary.

In addition, greater clarity in licensure and renewal requirements will encourage compliance with regulations to the benefit of licensees and the clients they serve.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

As stated above, Chapter 20 may be repealed to allow a clearer, more logical reorganization of regulations. In the major parts of regulations, the following changes will be considered:

General Provisions:

- New definitions for words and terms used in revised regulations will be added, such as “active practice” and “ASHA”; terms no longer used will be eliminated, such as “Type 1” and “Type 2.” For consistency the term “client”, rather than “patient” will be used throughout the regulations and included in the definitions.
- The requirement for posting a license will be amended to allow licensees to carry copies of their licenses to accommodate those who travel between facilities.
- A requirement for furnishing legal proof to the Board evidencing a name change will be added.
- There are no changes proposed in the application or renewal fees. Some administrative fees will be increased to reflect current costs and for consistency within the Department.

Requirements for Licensure

- General application requirements for both professions will be set out in one section.
- Requirements for licensure as an audiologist or as a speech-language pathologist will be placed in separate sections for greater clarity.
- All requirements relating to provisional licensure, whether issued to obtain clinical experience for initial licensure or to practice for a period under supervision to qualify for licensure by endorsement, reactivation or reinstatement, will be placed in one section rather than scattered throughout the chapter.
- Requirements for licensure by endorsement will be modified to require current certification by the American Speech-Language-Hearing Association (ASHA) or evidence of a graduate degree and passage of an examination. Currently, an applicant can qualify by documentation of a current license and active practice for three of the past five years.

Renewal and Continuing Competency (CE)

- Proposal for a reduction in the number of required CE hours from 30 hour every two years to 10 hours per year; the 10 hours would have to be verifiable by a recognizable sponsor, educational institution or organization.
- Elimination of Type 1 and Type 2 designated CE
- Addition of ability to carryover up to 10 hours of CE to the next renewal period.

Reactivation and Reinstatement

Requirements from other sections of the current regulations would be inserted in this Part; there are no substantive changes recommended.

Standards of Practice

- The Board has recommended adding language on supervisory responsibilities that the practitioner is not prohibited from delegating to an unlicensed assistant such activities or functions as are nondiscretionary and do not require the exercise of professional judgment for their performance.
- The Board has recommended adding language to address patient confidentiality, records retention, professional boundaries, advertising and disciplinary action taken by another professional regulatory agency.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

Upon review of the requirements for licensure, the Board has expressed its concern that speech-language pathologists are not required to complete a Clinical Fellowship Year (CFY). They can be fully licensed upon completion of the educational requirements and passage of the examination without any supervised experience in treating clients.

To address similar concerns for audiologists, the Board recommended in 2006 legislation for a provisional license in audiology to allow a person who has met the educational and examination to obtain supervised experience or a CFY. At that time, it was not deemed necessary to have a similar proposal for speech-language pathologists.

The current Board is concerned that speech-language pathologists (SLP's) are being licensed without supervised experience and has requested that staff explore the number of states currently requiring a CFY for (SLP's) as well as audiologists. In order to allow SLP's to practice during the clinical fellowship year, it would be necessary to introduce legislation to expand language in § 54.1-2604 for provisional licensure to include SLP's.

Additionally, the Board has noted in its review that dual licensure by the Board of Education and this Board for school speech-language pathologists may be duplicative and not be necessary. In most states, there is now a single license issued by the health regulatory board that oversees the licensure and practice of SLP's. Currently in Virginia, the Code (§ 54.1-2603) requires a person seeking licensure from this Board as a school speech-language pathologist to first hold a license with an endorsement in speech-language pathology from the Board of Education, so introduction of legislation would be necessary to eliminate the duplication. There has been some preliminary discussion with the Department of Education, and the concept of a single license will be explored further.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website, www.townhall.virginia.gov, or by mail, email, or fax to Elaine Yeatts, Agency Regulatory Coordinator, 9960 Mayland Drive, Suite 300, Richmond, VA 23233 or to elaine.yeatts@dhp.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last day of the public comment period.

A public hearing will be held after proposed regulations have been adopted and approved for publication. Notice of the hearing will be found on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and will be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, regulatory advisory panels) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The agency openly includes interested parties in discussion of regulations at committee and board meetings. In the clarification of these regulations through a periodic review, it does not anticipate the use of ad hoc advisory committees or panels. The agency would invite comment on whether to use the participatory approach to assist the agency in the development of a proposal.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

There is no impact on the family.

Periodic review

The Board of Audiology and Speech-Language within the Department of Health Professions announced its intent to conduct a periodic review of its regulations, 18VAC30-20-10 et seq., Regulations Governing the Practice of Audiology and Speech-Language Pathology and requested comment on whether there is a need for amendments for clarification and for consistency with changes in law and practice. The Notice was posted on Townhall, published in the Register and sent to interested parties with comment was requested from July 5, 2010 to August 4, 2010. There was no comment received on the periodic review.

Small business impact review

*Pursuant to § 2.2-4007.1 E and F each existing regulation shall be reviewed **at least once every five years** to ensure that it minimizes the economic impact on small businesses.*

If this NOIRA will include a review of the entire regulation for small business impact, please include, pursuant to § 2.2-4007.1 E and F, a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the complexity of the regulation; (3) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (4) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, include a discussion of the agency's determination whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

The Board has no information on the number of regulated entities under its jurisdiction that would be considered small businesses. The majority of speech-language pathologists work for health care institutions, school systems or other large organizations. While there are some licensees whose practice would constitute a small business, the economic impact of these regulations would be minimal and would be related to costs of obtaining and maintaining an active license.

(1) Continued need for the regulation

As part of its periodic review, the Board reviewed the continued need for the regulation. Section 54.1-2603 of the Code of Virginia requires a valid license to practice audiology or speech-language pathology; § 54.1-2602 specifically authorizes the Board to promulgate canons of ethics under which the professional activities are conducted. The Board is authorized by § 54.1-2400 to promulgate regulations, issue licenses, levy fees as necessary for its operation and carry out the disciplinary functions of a health regulatory board. Regulations established in Chapter 20 are consistent with the statutory requirements, and there is a continued need for regulation.

(2) Complexity of the regulation

Again, as part of the periodic review, the Board has determined that licensure requirements are somewhat confusing because the regulation does not make a clear distinction between the professions, which have differing provisions. The intent of the proposed action is to simplify the regulations for licensure and for continuing competency for ease of compliance by regulated entities.

(3) Extent to the which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation

The Board has noted in its review of regulations that dual licensure by the Board of Education and this Board for school speech-language pathologists may be duplicative and not be necessary. In most states, there is now a single license issued by the health regulatory board that oversees the licensure and practice of SLP's. Currently in Virginia, the Code (§ 54.1-2603) requires a person seeking licensure from this Board as a school speech-language pathologist to first hold a license with an endorsement in speech-language pathology from the Board of Education, so introduction of legislation would be necessary to eliminate the duplication. There has been some preliminary discussion with the Department of Education, and the concept of a single license will be explored further.

(4) Length of time since the regulation has been evaluated

Chapter 20 was last amended following a periodic review of regulations in 2004. Since that action, the chapter has been amended seven times. In those actions, the impact on small businesses was stated by the agency, reviewed by the Department of Planning and Budget and included in the Economic Impact Analysis of the proposal.